

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ALEXANDER PORTILLO

*Plaintiff,*

V.

WARAICH TRUCKING, INC. AND  
ALBERT VISIO

*Defendants.*

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CIVIL ACTION NO. 5:19-cv-1351  
JURY TRIAL DEMANDED

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**DEFENDANT WARAICH TRUCKING, INC.'S  
NOTICE OF REMOVAL**

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Pursuant to 28 U.S.C. § 1441 and Federal Rule of Civil Procedure 81, Defendant WARAICH TRUCKING, INC. (hereinafter, "WARAICH TRUCKING") hereby removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Defendant sets forth the following "short and plain statement of the grounds for removal."

**A. THE REMOVED CASE**

1. The removed case is a civil action filed with the 166th Judicial District Court of Bexar County, Texas, on or about September 27, 2019, styled *Alexander Portillo v. Waraich Trucking, Inc. and Albert Visio*; Cause No. 2019CI20478 (the "State Court Action"). The case arises from the alleged injuries sustained by Plaintiff from a motor vehicle accident that occurred on or about August 10, 2018, in Bexar County, Texas.

**B. DOCUMENTS FROM REMOVED ACTION**

2. Pursuant to Federal Rule of Civil Procedure 81 and 28 U.S.C. 1446(a),

Defendant attaches the following documents to this Notice of Removal as *Exhibit "A"*:

- (i) A list of all parties in the case, their party type and current status;
- (ii) a civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a);
- (iii) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him/her;
- (iv) A record of which parties have requested trial by jury; and
- (v) The name and address of the court from which the case is being removed.

**C. REMOVAL PROCEDURE**

3. Except as otherwise expressly provided by Act of Congress, any civil action brought in a State Court of which the district courts of the United States have original jurisdiction may be removed to the district court of the United States for the district and division embracing the place where the action is pending. 28 U.S.C. § 1441. The San Antonio Division of the Western District Court of Texas is the United States district and division embracing Bexar County, Texas, the county in which the State Court Action is pending.

4. Waraich Trucking was served with this lawsuit on or about October 23, 2019. Therefore, this Notice of Removal is filed within the time limits specified in 28 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all pleadings and orders in the State Court Action as of the date of this pleading are attached hereto as *Exhibit "A"* and incorporated herein for all purposes.

6. Waraich Trucking will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 166th Judicial District Court of Bexar County, Texas, where the action is currently pending.

**D. VENUE IS PROPER**

7. The United States District Court for the Western District of Texas is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the 166th Judicial District Court of Bexar County, Texas, is located within the jurisdiction of the United States District Court for the Western District of Texas, San Antonio Division.

**E. COMPLETE DIVERSITY OF CITIZENSHIP EXISTS**

8. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

9. As admitted in his Petition, Plaintiff is an individual who resides in Texas.<sup>1</sup>

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<sup>1</sup> See Pl. Original Petition at ¶ II(2).

10. Defendant Waraich Trucking is a foreign corporation organized and existing under the laws of the State of California.<sup>2</sup> Thus, pursuant to 28 U.S.C. § 1332(c)(1), Waraich Trucking is not a citizen of the State of Texas.

11. Consent is not necessary because it is Waraich Trucking's understanding that no other Defendant has been served at this time.

12. Because Plaintiff is a resident of the State of Texas and Waraich Trucking is not, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332. Therefore, the diversity of citizenship requirement is satisfied.

**F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED**

13. Plaintiff alleges in his Original Petition that he seeks damages in monetary relief in excess of \$1,000,000.00.<sup>3</sup>

19. Therefore, based on all of the aforementioned facts, the State Court Action may be removed to this Court by Waraich Trucking in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Western District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

**G. FILING OF REMOVAL PAPERS**

20. Pursuant to 28 U.S.C. § 1446(d), Waraich Trucking is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy

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<sup>2</sup> See also Pl. Original Petition at ¶ II(5).

<sup>3</sup> Pl. Original Petition at ¶ VII(23).

of this Notice with the Clerk of the 166th Judicial District Court of Bexar County, Texas, in which this action was originally commenced.

#### H. CONCLUSION

21. Defendant WARAICH TRUCKING hereby removes the above-captioned action from the 166th Judicial District Court of Bexar County, Texas, and requests that further proceedings be conducted in the United States District Court for the Western District of Texas, San Antonio Division, as provided by law.

Respectfully submitted,

MAYER LLP

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ATTORNEYS FOR DEFENDANT  
WARAICH TRUCKING, INC.

CERTIFICATE OF SERVICE

This is to certify that on the 18<sup>th</sup> day of November 2019, a true and correct copy of the foregoing has been forwarded to all counsel of record as follows:

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☒ E-FILE/E-SERVICE  
☐ ECM  
☐ HAND DELIVERY  
☐ FACSIMILE  
☐ OVERNIGHT MAIL  
☐ REGULAR, FIRST CLASS MAIL  
☐ CERTIFIED MAIL/RETURN RECEIPT REQUESTED

ATTORNEY FOR PLAINTIFF

/s/ John A. Coselli III  
John A. Coselli III